

U.S. Department
of Transportation

**Federal Railroad
Administration**

FRA-2002-13967-6

400 Seventh St., S.W.
Washington, D.C. 20590

APR 28 2003

OFFICE OF CHIEF COUNSEL

2003 APR 30 PM 2:48

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
26555 Evergreen Road, Suite 200
Southfield, Michigan 48076

Re: Docket Number FRA-2002-13967

Dear Mr. Fleming:

Thank you for your February 3, 2003 letter to the Department of Transportation Central Docket System the request for waiver referenced above. In this letter, the Brotherhood of Maintenance of Way Employes (BMWE) opposes the granting of a waiver to Montana Rail Link Inc. (MRL).

This waiver was sought to address a design flaw which incorporated spike notches in the skirted portion of certain MRL "skirted" 115-pound, six-hole joint bars as the notches act as stress risers from which cracks develop and propagate diagonally upward. Accordingly, MRL's waiver sought relief from the provisions of the Track Safety Standards concerning Title 49, Code of Federal Regulations (CFR), §213.121(b) to allow skirted 115-pound, six-hole joint bars with cracks between the outermost holes¹ to remain in service in Class 3 through 5 track.

The BMWE expresses concerns that the MRL waiver is based on the petitioner's reference to the Burlington Northern and Santa Fe Railroad (BNSF) waiver of a similar nature (Docket FRA-2001-10653). In the MRL request for waiver, it referenced laboratory tests conducted by the BNSF. Specifically, BMWE states:

".... the tests do not address the potential risks associated with horizontal propagation of cracks originating from the original fracture under field conditions. BNSF and MRL make the mistaken assumption that all cracks and stress fractures occurring between the outer two holes of a 6-hole skirted bar will propagate in a clean vertical fracture, resulting in nothing more than a 4-hole bar with no further defects."

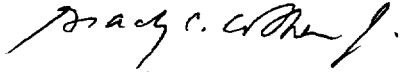
FRA has found no historical evidence that cracks turn and propagate horizontally in the subject joint bars at any time during their growth and as such, the Federal Railroad Administration (FRA) has ruled in favor of MRL. However, FRA reserves the right to modify or revoke the

¹ When facing the joint bar from either the gage or field side of the rail, the bolt holes are numbered consecutively (1 through 6) from left to right. The outermost bolt holes are identified as bolt holes 1 and 2, and bolt holes 5 and 6.

waiver if horizontal propagation does occur. Please see the enclosed copy of the MRL decision letter which includes conditions which address BMW's concerns.

I appreciate your interest in this matter and look forward to working with you on this and other transportation issues of importance to you and your members.

Sincerely,

A handwritten signature in black ink, appearing to read "Grady C. Cothen, Jr.", written in a cursive style.

Grady C. Cothen, Jr
Deputy Associate Administrator
for Safety Standards and Program Development

Enclosure